



XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक Cr. A. No. 1172/2001 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

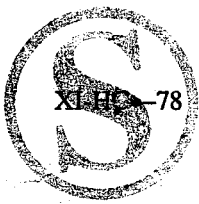
आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT: (In Jail) -Versus- RESPONDENT: (Criminal Appeal under Section 374 (2) of the Cr.P.C.) Division Bench: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Sunil Kumar Sinha, JJ. 1-11-2007:- Shri C.R. Sahu, counsel for the appellant. Shri Ashish Shukla, Additional Public Prosecutor for the State/ respondent. Oral judgment dictated on <i>Dais</i>. <u>Sunil Kumar Sinha, J.</u> This appeal is directed against the judgment of conviction and order of sentence dated 5-10-2001 passed by the 2nd Additional Sessions Judge, Baloda Bazar in S.T. No.104/2001 whereby the said Court after holding the accused/appellant guilty of the offence punishable under Section 302 of the IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs.300/-, in default of payment of fine to further undergo R.I. for 3 months.	Manghi Lal Sahu alias Jatgo, aged about 28 years, S/o Dallu Ram Sahu, R/o Subhash Ward, Bhatapara, P.S. Bhatapara (City), Distt. Raipur (CG) State of Chhattisgarh, Through Police Station Baloda Bazar, Distt. Raipur, (CG)



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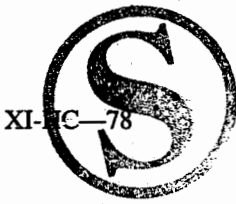
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	The case of the prosecution is that on 16-1-2001 at about 15.00 hours the accused/appellant chased deceased Maniram with a knife in his hand and when the deceased fell down in front of the grocery shop in the gali, after dashing with stool, the appellant caught hold of him through his hairs and after throwing him on the ground assaulted him with knife. He gave repeated blows to the deceased. The incident was witnessed by Ku. Santoshi (PW-3), PW-1 Smt. Shanti Bai and PW-2 Smt. Sonai Bai. First information report Ex.P/13 was lodged by Bhagirathi (PW-13). The investigating officer after giving notice Ex.P/3 to the Panchas prepared inquest Ex.P/4 on the body of the deceased. Plain soil and blood stained soil were seized from the place of occurrence under Ex.P/5. Weapon of offence i.e knife, shirt and full pant were seized under Ex.P/6 from the possession of the appellant. Site plan was prepared by Halka Patwari under Ex.P/12. Another site plan was prepared by the investigating officer under Ex.D/2. The body of the deceased was sent for postmortem examination to the Primary Health Centre, Baloda Bazar under requisition Ex.P/10-A. The postmortem examination was conducted by Dr. R.S. Joshi (PW-11), who prepared his report Ex.P/10. The doctor noticed following injuries on the body of the deceased:- (i) Incised wound on the wrist of left hand, size 3 cms x 1 cm x 1½ cm obliquely placed; (ii) Incised wound on the left wrist near elbow, size 1.5 cms x 1 cm x 2 cm; (iii) Incised wound on the left wrist, size 2 cms x 1 cm x 1 cm;	



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	(iv) Incised wound on the left forearm, size 2 cms x 1 cm x 1 cm; (v) Incised wound at the front side of left hand obliquely placed, size 2 cms x 1 cm x 1 cm; (vi) Incised wound on the stomach, size 2 cms x 1 cm, about 5 cms intestine had come out from the said wound; (vii) Incised wound obliquely placed on the right side of the chest near right nipple, size 2 cms x 1 cm x chest deep; (viii) Incised wound on the left side of the chest, size 2 cms x 1 cm x chest deep; (ix) Incised wound, size 2 cms x 1 cm x 1 cm on the left lumbar region; (x) Incised wound on the back at the scapular region, size 2 cms x 1 cm x 1 cm; (xi) Incised wound at the back below injury No.10, size 2 cms x 1 cm x 2 cm; (xii) Incised wound at the left side of the back, size 2 cms x 1 cm x 2 cms vertically placed; All the injuries were caused by hard and sharp object. Blood was present in all the injuries. They were ante mortem in nature. Huge	



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	amount of blood i.e. 200 ml. – 300 ml. was present in the chest cavity. Corresponding intercastle muscle of injury No.7 was cut, size was 1 cm x 1 cm. Intercastle muscle under injury No.8 was also cut. Right lung was cut corresponding to external injury No.7. Right lung was shrunk. Left lung was congested. Right chamber of the heart was full of blood. Left chamber was empty. Membranes of intestine were cut corresponding to injury No.6. Clotted blood was present in the buckle cavity. Clotted blood was also present inside stomach. Lateral part of the spleen was also injured. According to his opinion, cause of death was shock and haemorrhage caused by injuries to lung, spleen, intestine and other wounds. Death was homicidal in nature. Seized knife and clothes were sent for examination to the hospital under Ex.P/11-A. The doctor gave his report under Ex.P/11 and opined that injuries caused to the body of the deceased were possible by the said article (knife). Articles were sent for chemical examination to the Forensic Science Laboratory, Raipur under Ex.P/14 but the report could not be received. After completion of the usual investigation, charge sheet was filed in the Court of Judicial Magistrate 1st Class, Baloda Bazar, who in turn committed the matter to the Sessions Court, Raipur from where it was received on transfer by the 2nd Additional Sessions Judge, Baloda Bazar, who conducted the trial and convicted and sentenced the accused/ appellant as aforementioned.	



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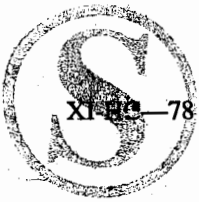
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आदेश पत्रक (पूर्वानुबद्ध)

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	Learned counsel for the accused/appellant has not disputed homicidal death of the deceased. Moreover, it has come in the evidence of PW-3 Ku. Santoshi, who is child witness, that she had witnessed that the appellant had assaulted the deceased with knife and he gave multiple knife injuries to the deceased. The evidence of this witness is supported by the evidence of Dr. R.S. Joshi (PW-11), who conducted postmortem on the body of the deceased and prepared his report Ex.P/10. According to the said witness, he noticed as many as 12 external injuries and various internal organs like lung, spleen and intestine etc. were damaged. He opined that cause of death was shock and haemorrhage due to above injuries sustained by the deceased, particularly, injuries to lung, spleen, intestine etc. Therefore, in view of the above ocular and medical evidence, it is established that death of the deceased was homicidal in nature. Learned counsel for the accused/appellant argued that PW-3 Ku. Santoshi is a child witness aged about 12 years and in the facts and circumstances of this case, explicit reliance cannot be placed on her evidence. To appreciate this argument, we have perused record of the case. So far as credibility of the evidence of child witness is concerned, the law is that evidence of child witness has to be scrutinized with care and caution and with circumspection to find out whether reliance can be placed on his/her evidence or not. If after careful scrutiny of the witness, version of such witness inspires confidence of the Court, then, there is no bar to place reliance on the evidence of such witness. PW-3 Ku. Santoshi has stated that she knows accused Manghi Lal. He used to sell pea (Muttur).	

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	The incident took place at about 3 p.m., at that time she was sitting in front of her house. Sonai and Shanti were also sitting along with her. Her mother had gone out to work. She saw that the accused was chasing her uncle (deceased Maniram). He was holding a knife in his hand. When her uncle was running, he dashed with a stool which was lying in front of grocery shop and he fell down. She has further deposed that her uncle tried to enter the grocery shop but shop keeper did not allow him to enter the shop and kept him outside. At the same time, the accused came there, caught hold of the deceased by his hairs, assaulted him and had thrown him on the ground. Thereafter he gave repeated knife blows to the deceased. The deceased tried to save himself but he could not do so. In cross-examination, she has admitted that Sonai and Shanti had gone inside the house but she was present outside the house. She has denied the suggestion that she could not see as to who was chasing Maniram. She herself has deposed that she had seen that the appellant was chasing her uncle having knife in his hand. On the other question, she has further stated that she went inside the house when the appellant had already assaulted the deceased. On appreciation, we find that even after lengthy cross-examination of this witness, in fact, the defence has not been able to elicit any such circumstance on which credibility of this witness can be doubted. Learned counsel for the accused/appellant also argued that father of this witness Bhagirathi has been examined as PW-13. In para-4 of his cross-examination, he has stated that it is true to say that from the door of his house place of occurrence would not be visible. He argued that when	



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	Santoshi was sitting in front of her house, then in light of evidence of this witness, she would not be able to see the place of occurrence. To appreciate this argument, we have seen map and site plan produced by the prosecution. It has come in the site plan (Ex.D/2) that shop and house of PW-3 Ku. Santoshi are situated on the same road. According to Ex.D/2, place of occurrence was at spot No.2 and PW-3 Ku. Santoshi was sitting at spot No.3. Careful perusal of the map would show that spot Nos.3 and 2 were in same line and persons sitting at spot No.3 would be able to see occurrence taking place at spot No.2, therefore, on account of this casual admission by PW-13 Bhagirathi that from the door of his house place of occurrence would not be visible, particularly in the light of contents of map Ex.D/2, would be of no help to the prosecution and evidence of PW-3 Ku. Santoshi, which otherwise appears to be true and reliable, cannot be disbelieved. The argument of learned counsel for the accused/ appellant cannot be accepted. As far as other eyewitnesses namely, PW-1 Smt. Shanti Bai and PW-2 Smt. Sonai Bai are concerned, both have turned hostile. But in cross-examination of PW-2 Smt. Sonai Bai, she has admitted the facts that she had narrated the story, as mentioned in para-2 of her evidence, to the police about the assault made by the appellant to the deceased. Even if we discard the evidence of these two witnesses, evidence of PW-3 Ku. Santoshi is intact and her evidence is corroborated by the medical evidence of Dr. R.S. Joshi (PW-11) as also postmortem report Ex.P/10. On appreciation of evidence of PW-3 Ku. Santoshi, we find that such evidence of PW-3 Ku. Santoshi inspires full confidence of the Court.	



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आदेश पत्रक (पूर्वानुबद्ध)

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Barve	For the foregoing discussion, we do not find any illegality or infirmity in the judgment of conviction passed by the trial Court which is based upon testimony of PW-3 Ku. Santoshi supported by the medical evidence of Dr. R.S. Joshi (PW-11). The conviction of the appellant is based upon cogent, reliable and clinching evidence, which does not require any interference by this Court. In the result, the appeal being devoid of merit deserves to be dismissed and it is hereby dismissed. Sd/- L.C. Bhadoo Judge	Sd/- Sunil Kumar Sinha Judge